




CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 18, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0162

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper
# 2	11.020 - Transportation of Detainees, 11.020-POL 12. Officers Engaged in Transporting a Detainee Will Not Respond to Routine Calls	Not Sustained - Unfounded

Named Employee #3

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

Named Employee #4

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)
# 2	SPD policy 5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy	Not Sustained - Unfounded (Expedited)

Named Employee #5

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Lawful and Proper (Expedited)

Named Employee #6

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing	Not Sustained - Unfounded (Expedited)

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.



EXECUTIVE SUMMARY:

The Complainant alleged that Named Employees #1 – #5 (NE#1 – NE#5) used unauthorized force against him. The Complainant also alleged NE#4 stole from him and that Named Employee #6 (NE#6)—an unspecified employee—treated him like “three-fifths a person” like “back in slavery days.” Finally, it was alleged that NE#2 responded to the call while transporting a detainee.

ADMINISTRATIVE NOTE:

All allegations in this case, except those against NE#2, were approved for Expedited Investigation. That means OPA, with the Office of Inspector General’s agreement, believed it could issue findings based solely on its intake investigation without interviewing the involved employees. As such, OPA only interviewed NE#2.

On July 6, 2023, OIG certified this investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

The Complainant was arrested for robbery, attempted theft of a motor vehicle, and obstruction following a foot pursuit. NE#2 caught the Complainant and used a “double leg takedown” to bring the Complainant to the ground. NE#1, NE#3, NE#4, and NE#5 helped NE#2 handcuff the Complainant. Witness Supervisor #1 (WS#1)—the screening sergeant— spoke with the Complainant after the arrest. The Complainant told WS#1 his head was slammed against the ground, his left hand was broken, and he was “kicked in the face.” The Complainant also alleged unspecified officers treated him like “three-fifths a person” like “back in slavery days.” Finally, the Complainant alleged that NE#4 stole his lighter.

WS#1 screened the incident with SPD’s Force Investigation Team (FIT). FIT declined to investigate after medical testing determined the Complainant had no injuries to his wrist or head. WS#1 submitted an unsubstantiated misconduct screening¹ and bias review² to OPA. OPA opened this investigation.

During its investigation, OPA reviewed the unsubstantiated misconduct screening and bias review, computer-aided dispatch (CAD) call report, incident report, and body-worn video (BWV). OPA also reviewed the Type II use-of-force documents and the chain of command review. Finally, OPA interviewed NE#2.

BWV captured the primary investigation into the underlying crime, identification of the Complainant as the suspect, foot pursuit, and apprehension. However, BWV did not fully capture the Complainant’s movements before NE#2 used a “double leg takedown.”

OPA finds that, more likely than not, the following occurred.

¹ See Office of Police Accountability Internal Operations and Training Manual (OPA Manual), Section 8.1 – Unsubstantiated Misconduct Screening. “Allegations of misconduct that are clearly refuted by evidence can be investigated and documented by the chain of command and then screened with OPA via email.” *Id.*

² See OPA Manual, Section 8.6 – Bias Reviews. “SPD frontline supervisors conduct preliminary investigation into bias allegations that are made in the field.” *Id.*



a. Primary Investigation and Identification of Complainant

On February 6, 2023, SPD officers—including NE#1 and NE#3—responded to an attempted carjacking call involving a male offender and a female victim. Community Member #1 (CM#1)—the victim—reported exiting her running vehicle to check whether she was legally parked. CM#1 stated that a man approached her and conversed with her. CM#1 reportedly declined to engage further with the man. CM#1 said the man passed her, opened her car door, and sat in the driver’s seat. CM#1 said she held the door as the man tried to shut it. CM#1 said the man grabbed her cell phone and purse from the vehicle and ran away.

CM#1 said she yelled for help. Community Member #2 (CM#2)—an employee at a nearby building—chased the offender. CM#2 reported that the offender demanded money and threatened to kill him. CM#2 reportedly offered the offender money to drop CM#1’s purse. CM#2 said the man dropped the purse, which CM#2 retrieved and returned to CM#1. Witnesses described the man as Black, 5’9” inches, with an average build, wearing a black beanie, brown coat, blue t-shirt, blue jeans, and brown or tan shoes. Witnesses also stated he wore a white hooded jacket but removed it as he fled.

NE#3 reviewed surveillance footage from a nearby building, showing the man attempting to steal CM#1’s vehicle and then stealing her purse and phone. NE#3 broadcasted the offender’s description, a Black man wearing a black beanie, tan Carhartt jacket, black facemask, blue jeans, light tan or brown sneakers, and a black backpack.

NE#3 used the “Find My iPhone” application to track CM#1’s cell phone. NE#3 tracked it near 7th Avenue and James Street—about two blocks from the incident location. NE#3 broadcasted the updated location. NE#1 searched the area and found the Complainant matching the broadcasted description.

b. Foot Pursuit

NE#1 stayed in his vehicle and watched the Complainant until backing officers arrived. NE#3 arrived, and the Complainant fled. NE#3 chased him. NE#1 activated his lights and sirens and followed in his vehicle.

At that time, NE#2 drove nearby, transporting a detainee to King County Jail. NE#2 received radio updates about the nearby foot pursuit and saw NE#3 chasing the Complainant.

The Complainant ran southbound along the western sidewalk of 6th Avenue with NE#3 trailing on foot. NE#2 drove southbound on 6th Avenue with his lights and sirens activated. The Complainant turned onto Jefferson Street, and NE#2 followed him. The Complainant ran into the street, contacting the front passenger side of NE#2’s vehicle as it turned the corner.



The Complainant Colliding with NE#2's Vehicle

The Complainant ran across Jefferson Street towards 5th Avenue. NE#2 exited his patrol vehicle and pursued the Complainant on foot. The Complainant ran through Goat Hill Park and turned southbound on 5th Avenue. NE#2 and NE#3 followed on foot.

c. Apprehension

The Complainant turned right from 5th Avenue onto Terrace Street westbound. As the Complainant approached the southern sidewalk of Terrace Street, NE#2 followed, yelling, "Seattle police. Stop, you're under arrest." The Complainant continued westbound as NE#2 approached the Complainant's right side. A bus shelter, scooter, and a community member blocked the Complainant's path.

NE#2 crouched, wrapped his arms around the Complainant's legs, lifted the Complainant, and brought him to the ground. The Complainant's buttocks, left arm, and left side hit the ground.

NE#2 rolled the Complainant onto his stomach. NE#1, NE#2, and NE#3 held the Complainant while NE#3 handcuffed him.

CM#2 identified the Complainant as the offender. The Complainant was transported to Harborview Medical Center for his complaints of injury.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged that officers slammed him against the ground, broke his left hand, and kicked his face.

An officer's use of force must be objectively reasonable, necessary, and proportional. SPD Policy 8.200(1). Officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." Whether force is reasonable depends "on the totality of the circumstances" known to the officers balanced against "the rights of the subject, in light of the circumstances surrounding the event." SPD Policy 8.050. Reasonableness must consider that officers are often forced to make "split-second decisions" under tense and dynamic circumstances. *Id.* There are several factors to weigh when evaluating reasonableness. *See id.* Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." *Id.* Last, the force used must be proportional to the threat posed to the officer. *Id.*

NE#1 used lawful and proper force to assist with the Complainant's arrest. BWV showed NE#1 exited his vehicle after NE#2 brought the Complainant to the ground. NE#1 helped NE#2 and NE#3 secure the Complainant by placing his knee over the Complainant's shoulder and back during handcuffing and using *de minimis* force to grab the Complainant's arms, roll the Complainant, and position the Complainant into the recovery position. NE#1 did not slam the Complainant to the ground, injure the Complainant's hand, or kick the Complainant. Moreover, a medical evaluation determined that the Complainant's hand was not broken and that the Complainant did not suffer a head injury.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #2 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged that officers slammed him against the ground, broke his left hand, and kicked his face.

NE#2 used a "double leg takedown" to apprehend the Complainant. NE#2 crouched below the Complainant's waistline, wrapped his arms around the Complainant's legs, and lifted the Complainant off his feet. NE#2 tackled the Complainant onto a cement sidewalk—with the Complainant's buttocks and left arm and side contacting the ground. That Type II use of force was "reasonably expected to cause physical injury greater than transitory pain but less than great or substantial bodily harm." SPD Policy 8.050 (defining Type II Use of Force). Specifically, NE#2's tactic could foreseeably cause abrasions, bruising, or lacerations. *See* SPD Policy 8.400 (examples of Type II uses of force).

However, under the circumstances, NE#2's use of force was objectively reasonable, necessary, and proportional.

NE#2 had probable cause that the Complainant committed at least two felonies, including robbery in the second degree—a violent crime. *See* RCW 9A.56.210 and 9.94A.030(58)(a)(viii) (defining violent offense). The Complainant



also exhibited significant resistance by leading the police on a lengthy foot pursuit. Further, the officers were strongly interested in apprehending him, given the nature of his offenses. NE#2 was the first officer to catch the Complainant and had limited time to act before the Complainant continued to flee. NE#2 told OPA the chase left him “out of breath, and I couldn’t get another word out.” *Compare* SPD Policy 8.050 (listing factors to consider when determining whether force was objectively reasonable).

NE#2’s use of force report and OPA interview described the Complainant as taking a fighting stance by stepping back and extending his left hand as if to strike NE#2. The angle of NE#2’s BWV did not entirely depict the Complainant’s actions immediately before the takedown. However, BWV from NE#2 and NE#3 corroborate NE#2’s perception.

The moment before the takedown showed the Complainant holding his left hand away from NE#2.



The red arrow points to the Complainant’s left hand, and the blue arrow points to NE#2’s right hand.

Moreover, NE#3’s BWV showed—albeit at a distance—the Complainant “blading” his body, stepping back with his left foot, and holding his left hand away from NE#2.



The red arrow points to the Complainant and the blue arrow points to NE#2.

Overall, OPA finds that NE#2, more likely than not, perceived that the Complainant was about to assault him.

NE#2's use of force was also necessary, as NE#2 did not have the benefit of team tactics when he contacted the Complainant, and there was no reasonably effective alternative for defending himself from the Complainant's potential threat. NE#2's force was also reasonable in preventing the Complainant from escaping. Similarly, NE#2's force was also proportional under the totality of the circumstances.

Other than the "double leg takedown," NE#2 did not slam the Complainant to the ground or use force likely to injure the Complainant's hand. Nor did NE#2 kick the Complainant's face. Moreover, a subsequent medical evaluation determined that the Complainant's hand was not broken and that the Complainant did not suffer a head injury.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained - Lawful and Proper**

Named Employee #2 - Allegation #2

11.020 - Transportation of Detainees, 11.020-POL 12. Officers Engaged in Transporting a Detainee Will Not Respond to Routine Calls

It was alleged that NE#2 responded to this call while transporting a detainee.

SPD policy forbids officers transporting a detainee from responding to "routine calls." SPD Policy 11.020-POL-12. The policy provides an exception for responding to a "threat to life safety." *Id.*

NE#2 told OPA that although he was aware of the robbery investigation, he did not actively respond to the call. Instead, NE#2 stated he saw NE#3 chasing the Complainant while he was en route to King County Jail.³ NE#2 said that NE#3 was the only officer he saw chasing the Complainant, so he presumed he had no backup. NE#2 also said that NE#3 recently returned to work following a hip injury and likely needed help pursuing a "possibly dangerous suspect." Finally, NE#2 stated he did not believe the foot pursuit was a "routine call."

³ King County Jail is between 5th and 6th Avenues and James and Jefferson Streets. The Complainant contacted NE#2's vehicle near 6th Avenue and Jefferson Street.



OPA also recognizes that WS#1 recognized in his Type II Force Investigation that “leaving a prisoner unattended in a patrol vehicle is not a best practice.” WS#1 documented a debrief with NE#2, who recognized “this was not ideal but stated the circumstances of the incident and what he was hearing and seeing led him to believe [NE#3] was chasing [the Complainant] alone,” following the commission of a violent offense. WS#1 also wrote the following:

[NE#2] demonstrated to me in our discussion that he recognized the seriousness of leaving a detainee alone in his patrol vehicle and the possible negative outcomes of that action. We discussed other options to include following a fleeing suspect and officer in his vehicle and waiting for additional units or only leaving his vehicle if the officer in pursuit goes hands-on with the suspect and is alone.

Ultimately, considering the nature of the call and NE#2’s perception that NE#3 pursued the Complainant alone, OPA cannot conclude that NE#2 violated policy. Instead, OPA concurs with the conclusion of NE#2’s watch commander—that NE#2’s decision was not unreasonable given the seriousness of the situation.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #3 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged that officers slammed him against the ground, broke his left hand, and kicked his face.

NE#3 used lawful and proper force to assist with the Complainant’s arrest. NE#3 saw NE#2 take the Complainant to the ground, order the Complainant onto his stomach, and physically move the Complainant onto his stomach. NE#3 put his right knee onto the Complainant’s left leg, used *de minimis* force to pull and hold the Complainant’s left arm behind the Complainant’s back, and handcuffed the Complainant. NE#3’s Use of Force report stated that he repositioned his right knee from the Complainant’s leg to the Complainant’s lower back or buttocks during handcuffing. NE#3 did not slam the Complainant to the ground, use force likely to injure the Complainant’s hand, or kick the Complainant’s face. Moreover, a medical evaluation determined that the Complainant’s hand was not broken, and the Complainant did not suffer a head injury.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #4 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged that officers slammed him against the ground, broke his left hand, and kicked his face.

NE#4 used lawful and proper *de minimis* force while searching and guarding the Complainant. NE#4 arrived after the Complainant was apprehended and handcuffed. NE#4 searched the Complainant and guarded him while awaiting an ambulance to transport the Complainant to a hospital. During that time, the Complainant complained about NE#4



causing him pain. BWV showed that NE#4 used only *de minimis* force to hold or guide the resistant Complainant. NE#4 also repeatedly adjusted his actions to accommodate the Complainant's objections. NE#4 did not slam the Complainant against the ground, use force that could have broken the Complainant's hand, or kick the Complainant's face. Moreover, a medical evaluation determined that the Complainant's hand was not broken and that the Complainant did not suffer a head injury.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**

Named Employee #4 - Allegation #2

SPD policy 5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy

The Complainant alleged that NE#4 stole his property.

Employees must adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-2.

NE#4 searched the Complainant incident to a lawful arrest. See SPD Policy 6.180-POL-6 ("Officers may, incident to a lawful arrest, search an arrestee's person and the area within the arrestee's immediate control.") NE#4 recovered what appeared to be a lighter from the Complainant's jacket pocket. The Complainant alleged that NE#4 stole his lighter. NE#4 explained that the lighter was still the Complainant's property. NE#4 told the Complainant that he put the lighter on the ground next to the Complainant to be bagged with the rest of the Complainant's property. BWV showed NE#5 later picking up the lighter and placing it inside a manilla envelope with the Complainant's other property. OPA saw no evidence that NE#4 stole the Complainant's property.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**

Named Employee #5 – Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged that officers slammed him against the ground, broke his left hand, and kicked his face.

NE#5 used lawful and proper *de minimis* force while guarding the Complainant. NE#5 arrived after the Complainant was apprehended and handcuffed. NE#5 used *de minimis* force to hold the Complainant's legs to prevent the Complainant from fleeing, kicking officers, or injuring himself. NE#5 did not slam the Complainant to the ground, use force that could have broken the Complainant's hand, or kick the Complainant's face. Moreover, a medical evaluation determined that the Complainant's hand was not broken and that the Complainant did not suffer a head injury.

Accordingly, OPA recommends this allegation be Not Sustained – Lawful and Proper (Expedited).

Recommended Finding: **Not Sustained - Lawful and Proper (Expedited)**



Named Employee #6 – Allegation #1

5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing

The Complainant alleged that NE#6—an unspecified employee—used bias-based policing by treating him like “three-fifths a person” like “back in slavery days.”

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” SPD Policy 5.140-POL. This includes different treatments based on the race of the subject. *See id.*

OPA finds that the Complainant was arrested based on probable cause that he committed multiple crimes. OPA found no suggestion that an officer engaged in bias-based policing due to the Complainant’s race.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded (Expedited).

Recommended Finding: **Not Sustained - Unfounded (Expedited)**